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No. 83-2079

In the Supreme Court of the United States

OCTOBER TERM, 1984

DON H. SLY, ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

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Petitioners challenge the entry of a permanent injunction against certain abusive debt collection practices, contending (1) that they are not "debt collectors" as defined in Section 803(6) of the Fair Debt Collection Practices Act, 15 U.S.C. 1692a(6);[1] (2) that there is no jurisdictional basis for the action; and (3) that enforcement of the injunction would involve the government in continuing surveillance of church activities in violation of the Establishment Clause. These arguments are without merit.

1. In the early 1970s, petitioner Sly owned and operated a Tennessee debt collection agency, the Bureau of Collections, Inc. (R. 552).[2] In 1974, Tennessee revoked his debt

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[1]Petitioners have incorrectly cited this Section as 15 U.S.C. 1692a(5).

[2]Citations to "R." refer to the district court record. Citations to "Tr." refer to the transcript of the hearing on motion for a preliminary injunction, October 1, 1981.

collection license. Sly then founded the Universal Church of Jesus Christ, Inc. (Church), which established an unincorporated Bureau of Collections, purportedly to "mediate" debts between consumers and creditors (Pet. App. D 6-8). Sly sold the assets of his old debt collection firm to the new Bureau (*id.* at 7).

The "mediation" activities of petitioners consist of soliciting overdue accounts from creditors (R. 119-120, 131-132) and sending delinquent consumers a series of letters urging payment (R. 221). Some of these letters were sent on the letterhead of Sly's old firm, the Bureau of Collections, Inc. (R. 14, 15, 17). The Bureau kept a portion of all money paid by consumers as its fee (R. 119-120). Petitioners engaged in numerous practices forbidden by the Act, including sending communications that threatened actions not intended to be taken, collecting unauthorized overcharges from consumers, and sending communications to consumers that falsely purported to be authorized by a court (Tr. 29).

The Commission brought an action in the United States District Court for the Northern District of Alabama to enjoin petitioners' illegal conduct. On October 2, 1981, the district court issued a preliminary injunction (R. 425-426). On June 25, 1982, after petitioners persisted in their unlawful activities, the court held petitioners in contempt (R. 506-510). Subsequently, on the merits, the district court granted the Commission's motion for summary judgment and issued a permanent injunction against petitioners (Pet. App. B 1-8). Petitioners appealed, and the court of appeals affirmed without opinion (Pet. App. A 1).

2. The district court concluded that petitioners are "debt collectors" as defined by the Act (Tr. 27).[3] It found that

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[3]The district court's factual findings, made during a hearing on the Commission's motion for a preliminary injunction, were incorporated by reference in the court's order granting summary judgment (Pet. App. B 2).

petitioners' debt collection activities were in "express violation of federal law designed to protect the public from fraudulent activities of debt collectors." It also concluded that these activities were "completely secular activities of the defendants," and were "not in furtherance of any religious activities of the defendant." Tr. 28. The district court based these findings on evidence that included numerous dunning letters sent by petitioners to consumers (Tr. 29-30), the post card used by petitioners to solicit the overdue accounts from creditors (R. 131-132), the leaflet explaining petitioners' fees (R. 119-120), examples of petitioners' stationery (R. 14, 15, 17), and the testimony of petitioner Sly.

Petitioners' argument that they were not engaged in debt collection activities within the meaning of the statute (Pet. 16-25) is based solely on quotations from some of their more benign dunning letters. The court of appeals rejected their argument without need for opinion. Further review by this Court of this purely factual question is not warranted.[4]

3. Petitioners also assert (Pet. 25-28) that there was no jurisdictional basis for this injunctive action. This appears to be based on a misunderstanding of Section 814(a) of the Act, 15 U.S.C. 1692*l*(a). That Section simply provides that the Commission's enforcement actions under the Act have an independent jurisdictional basis, and are not limited by the jurisdictional tests of the Federal Trade Commission Act, 15 U.S.C. 44 and 45. The jurisdictional basis for the Commission's enforcement of the Fair Debt Collection

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[4]Petitioners assert, without explanation or elaboration (Pet. 17), that if applied to their activities the Act would be unconstitutionally vague and in violation of the First Amendment. However, given the factual findings of the district court that their debt collection activities are purely secular and not in furtherance of their religion, petitioners' argument has no basis.

Practices Act is found in Section 803(6), 15 U.S.C. 1692a(6), which limits the definition of "debt collectors" to persons engaged in certain activities involving "any instrumentality of interstate commerce or the mails."

The fact that petitioner Church is incorporated as a religious organization does not affect the jurisdiction of the court or the Commission. The Constitution permits the courts to exercise jurisdiction over purported religious activity to determine whether conduct at issue is motivated by sincerely held religious beliefs and entitled to constitutional protection. *United States* v. *Ballard,* 322 U.S. 78 (1944). No more is involved here.

4. Petitioners also contend (Pet. 28-38) that the district court's injunction constitutes continuing surveillance of a church's religious activities, in violation of the Establishment Clause. See *Lemon* v. *Kurtzman,* 403 U.S. 602, 614 (1971); *Walz* v. *Tax Commission,* 397 U.S. 664 (1970). This contention raises no significant question of law, but merely the application of settled principles to the particular facts of this case. In any event, it was correctly rejected by the courts below.

The Establishment Clause does not create a "total separation" between religious organizations and the government, but is intended to "prevent, as far as possible, the intrusion of either into the precincts of the other." *Lemon* v. *Kurtzman,* 403 U.S. at 614. Here, as the district court found, the debt collection activities of petitioners are a purely secular activity, wholly unrelated to any religious belief of petitioners. It is no intrusion into protected activity for the government to regulate the purely secular (and in this case, unlawful) activities of purported churches. *United States* v. *Ballard, supra.*

Moreover, the district court's injunction was carefully tailored to minimize direct access by the Commission to the records of petitioner Church (see Tr. 33). The injunction simply requires petitioners to file a statement with the Commission before resuming debt collection activities, showing the manner in which they intend to proceed (Pet. App. B 5-8), and to file a subsequent report, 180 days after resuming collection activities, with information on the creditors and consumers with whom petitioners have done business (*id.* at 7-8). This will allow the Commission to determine whether petitioners are complying with the court's order without involving the Commission in direct surveillance of petitioners' activities.

There is no reason to restrict the reach of the injunction to petitioner Sly and the Bureau of Collections, as petitioners suggest (Pet. 32). Petitioner Church administered and controlled the Bureau of Collections, owned its assets, and voted to violate the district court's preliminary injunction (*id.* at 33-35). Because the Church itself has engaged in illegal secular debt collection abuses, there is no violation of equitable principles in applying the injunction to it.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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